

in process of clearing with JCS - May 1953

DRAFT NOTE FROM UNITED STATES AMBASSADOR
TO JAPANESE MINISTRY OF FOREIGN AFFAIRS

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Excellency:

I have the honor to refer to your note of April 14, 1953 with which was enclosed a draft of a protocol on criminal jurisdiction which Japan proposes to conclude with the United States upon the coming into force of the North Atlantic Treaty Status of Forces Agreement, and also a proposed draft of agreed official minutes regarding the provisions of the Protocol.

On _____ the United States Senate gave its advice and consent to the ratification of the NATO status of forces agreement. Article XVIII of the Agreement provides that thirty days after four signatory states have deposited their instruments of ratification the agreement shall come into force between them. France, Norway and Belgium have already deposited their ratifications. Consequently the NATO status of forces agreement will come into force with respect to the United States thirty days after the deposit of the United States ratification.

My Government is prepared to use the drafts enclosed with your note of April 14, 1953 as the basis for negotiation of an agreement on criminal jurisdiction to be concluded immediately upon the

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coming into force of the NATO agreements. Proposals of my Government for changes in the draft Protocol and in the draft of agreed official minutes regarding the Protocol are attached.

In this connection my Government wishes to make clear its belief that the agreement ultimately concluded between the United States and Japan and the official minutes accompanying the agreement should also be made applicable to the United Nations forces in Japan through the agreement now under negotiation concerning the status of those forces.

Enclosures:

1. US proposals for changes in the draft Protocol.
2. US proposals for changes in draft of agreed official minutes regarding Protocol.

State Department Draft
April 29, 1953

UNITED STATES PROPOSALS FOR CHANGES IN THE DRAFT PROTOCOL
TO AMEND ARTICLE XVII OF THE ADMINISTRATIVE AGREEMENT
PROPOSED BY THE JAPANESE GOVERNMENT ON APRIL 11, 1953

- (1) In the third clause of the preamble the word "of" should be inserted between the words, "existing provisions" and the words "Article XVII", and the ending of the clause should be changed to read "... shall be abrogated and the following provisions shall be substituted:"
- (2) In paragraphs 1 and 2, the order of the (a) and (b) clauses should be reversed to conform with the NATO agreement.
- (3) In paragraph 1 and subsequent paragraphs the phrase "of the civilian component thereof" should be changed to read "the civilian component" to conform with other Articles of the Administrative Agreement.
- (4) In paragraph 3(a) the phrase "a member of the United States armed forces, or of the civilian component thereof" should be changed to read "persons subject to the military law of the United States".

COMMENT: The purpose of this change is to confer upon the military authorities of the US the military right to exercise jurisdiction over dependents in cases where they commit offenses solely against the property or security of the US or solely against the person or property of another member of the US Armed Forces, the civilian component or a dependent. While this purpose could be accomplished by merely adding the word "dependents", the proposed change is preferred.

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~~preferred because it would not have to be changed in the event of
any changes in the categories of persons subject to its jurisdiction.~~

(5) In paragraph 5(c) the words "a suspect member" should be changed to read "an accused member" to conform with the NATO agreement.

~~(6) In paragraph 6(b) the words "a suspect member" should be changed to read~~

~~"an accused member"~~

(7) In paragraph 9(e) the words "defense counsel" should be changed to read "legal representation" in 2 places to conform with NATO.

(8) The following paragraph should be added as Paragraph 11 of the draft Protocol:

11. In the event of hostilities in the Japan area either Japan or the United States shall have the right, by giving 60 days' notice to the other, to suspend the application of any of the provisions of this Article so far as it is concerned. If this right is exercised, Japan and the United States shall immediately consult with a view to agreeing on suitable provisions to replace the provisions suspended.

COMMENT: The above paragraph is similar to Article XV of the NATO Status of Forces Agreement, which is part of the criminal jurisdiction provisions of the NATO agreement. Consequently, in accordance with the first paragraph of Article XVII of the Administrative Agreement, the above paragraph should be included in

an agreement with Japan on criminal jurisdiction.

*Proposed State
Dept Summary taken
from rough draft
5/6/53*

It is proposed to add to minutes concerning 3 (c) the following:

"The Japanese Government declares that it intends to waive its primary right to exercise jurisdiction except in cases of particular interest or importance to Japan.

"In cases in which the U. S. military authorities have arrested members of U. S. Armed Forces, the civilian component, or their dependents for offences with respect to which Japan has the primary right to exercise jurisdiction, the U. S. military authorities shall notify the appropriate Japanese authorities of such arrest within _____ days from the date of the arrest. If the Japanese authorities wish to exercise jurisdiction, they shall inform the U. S. military authorities within _____ days of the notification of the arrest.

"In cases in which Japanese authorities have arrested members of the U. S. Armed Forces, the civilian component or their dependents for offences over which Japan has the primary right to exercise jurisdiction, the Japanese authorities shall inform the U. S. military authorities within _____ days from the date of the arrest whether they intend to exercise jurisdiction."